

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-1656

United States of America,

Appellee,

v.

Michael William Pinney,

Appellant.

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Appeal from the United States
District Court for the Western
District of Missouri

[UNPUBLISHED]

Submitted: November 7, 2000

Filed: November 14, 2000

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

Michael William Pinney appeals the sentence imposed by the District Court¹ for the Western District of Missouri upon his guilty plea to robbing a bank, in violation of 18 U.S.C. § 2113(a). The district court sentenced appellant to 51 months imprisonment

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

and 3 years supervised release. For reversal, appellant argues the district court erred in increasing his base offense level pursuant to U.S.S.G. § 2B3.1(b)(2)(F) (“if threat of death was made, increase by 2 levels”). For the reasons discussed below, we affirm the judgment of the district court.

Appellant admitted to the following offense facts: he handed the teller a note which read “I have a gun. I don’t want to use it. Just give me your money. Thanks.”; he kept one hand in his pocket as if he had a gun; and when the teller hesitated, he said, “I don’t have all day.” We believe that appellant’s conduct sufficiently expressed a threat of death, thus warranting the increase. See id. § 2B3.1, comment. (n.6) (enhancement does not require express statement of intent to kill victim, and applies to “conduct that would instill in a reasonable person, who is a victim of the offense, a fear of death”; threat may consist of oral or written statement, act, gesture, or combination); United States v. Gibson, 155 F.3d 844, 845-47 (7th Cir. 1998) (robber’s note stating “I have a gun” constituted threat of death in context of robbery where unusual mitigating circumstances were not present); cf. United States v. Bell, 12 F.3d 139, 139-40 (8th Cir. 1993) (per curiam) (robber’s note warning teller not to make sudden moves or alert anyone or robber would pull pistol and start shooting expressed sufficient immediate threat of death to warrant § 2B3.1(b)(2)(F) increase).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.